



**Michigan Department of Agriculture
Food and Dairy Division
Food Service Sanitation Section**

Model Food Protection Program Enforcement Procedures

- ◆ Purpose
- ◆ Principles
- ◆ Definitions
- ◆ Progressive Enforcement Procedures
- ◆ Enforcement Options
- ◆ Appendices, References, Example Letters and Notices

◆ PURPOSE

The purpose of this document is to provide model enforcement procedures for local health department (LHD) enforcement of the Michigan Food Law of 2000, Act 92, Public Acts of 2000. This model is necessarily general, recognizing the diverse local rules that govern the various local health departments. This model has been drafted to comply with sections 2441 and 2442 of Michigan's Public Health Code, the Food Law of 2000, and Administrative Procedures Act.

MDA recommends that LHDs assess their regulatory provisions that pertain to food service establishments in light of this model and consider proposing changes to their ordinances or policy and procedure where they determine that provisions contained within this Model will strengthen their programs. Such an assessment may involve reviewing problems encountered in attempts to prosecute under existing local provisions; considering comments received by the regulatory authority about its enforcement process; consulting with staff and legal counsel to identify gaps or weaknesses in the provisions; comparing provisions with sister agencies for comprehensiveness, equity, and uniformity; and seeking input from outside sources that have experience in taking, or being the subject of, enforcement actions.

◆ PRINCIPLES

Although the situations necessitating escalated enforcement actions comprise a small percentage of those encountered by the regulator, enforcement tools must be used where compliance is not obtained voluntarily. At such times, there should be clearly stated and legally sound procedures that include the criteria for compliance and enforcement, the responsibilities of all parties, sanctions for noncompliance, and constitutional guarantees.

Model Food Protection Program Enforcement Procedures

This model applies the progressive enforcement approach. This approach begins with providing education/information and progresses to a penalty or restriction of a firm's operations. When applied consistently to all firms, it promotes fair and objective treatment. It is also critical to note that persons regulated under state law have a constitutional right to equal protection and due process. Due process required under the Administrative Procedures Act is incorporated into this model.

Imperative to any enforcement program is timely and appropriate follow-up. Any order or enforcement decision must include follow-up by the sanitarian or manager to ensure the enforcement actions results in 1) establishment compliance or 2) further enforcement.

This model is designed to provide flexibility. It does not dictate what specific action must occur in each particular situation, but provides choices for each level of enforcement. The decision regarding particular actions will be made by local health department staff given the specifics of each case.

◆ DEFINITIONS

Continuous Violation: A specific violation that is documented, persists, and is not corrected within an allowed or agreed upon time period.

Critical item means a provision of the Food Code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. The Food Code identifies 108 sections as being critical items.

Food Code means the FDA Food Code adopted and amended by the Michigan Food Law of 2000.

Imminent or Substantial Hazard: A condition which may include, but is not limited to, loss of power to the establishment, loss of the water supply, backup of sewage wastes into the building, severe structural damage, an ongoing foodborne illness caused by the establishment, a severe vermin infestation that threatens the integrity of the establishment's food supply, or any condition which in the opinion of the health officer is an imminent threat to the public's health.

Informal Hearing: An informal hearing is held to determine a compliance schedule for certain violations. (See Appendix A for informal hearing procedures). An unsatisfactory informal hearing results in a formal hearing.

Insanitary Conditions: Conditions in violation of the 1999 Food Code that are not classed as critical item violations, but which are violations at the time of an inspection.

Non-Compliance at the time of an Inspection; any or all of the following:

- a. An Imminent or Substantial Hazard is documented [Food Law 2000, Section 1109]
- b. Critical items present and determined to be chronic or continuous violations [Food Law of 2000, Section 6129],
- c. Insanitary conditions are substantial, or present and not corrected according to agreed upon schedule, or noted as chronic violations [Food Law of 2000, Section 6129].

Model Food Protection Program Enforcement Procedures

Prohibited act: one of the enumerated prohibited acts in Chapter 5 of the Food Law of 2000.

Re-inspection (follow-up): is a partial inspection that focuses only on those violations previously documented and scheduled for follow-up. Follow-up inspections are generated by (1) the presence of an uncorrected critical violation or prohibited act, (2) the result of an enforcement action, or (3) requested by the licensee.

Routine inspection: is a full inspection that occurs at a specified time interval. It is expected that all areas of firms will be evaluated during this inspection and all significant violations documented. In addition to notification of violations, the routine inspection provides the opportunity for education to correct violations and achieve compliance.

Substantial Compliance at the time of an Inspection (routine or reinspection) Minimum standards:

- a. No Imminent or Substantial Hazards; and
- b. Critical items are not present or are corrected immediately; and
- c. Insanitary conditions are insubstantial (suggested limit of 10 non-critical Food Code sections violated or 25 individual occurrences of any combination of non-critical violative items).

♦ PROGRESSIVE ENFORCEMENT PROCEDURES.

In general, the steps leading to an enforcement action are:

- A. Inspection
- B. Documenting violations
- C. Assessing history with respect to violations and enforcement
- D. Flagging establishment for enforcement review by management
- E. Determining status
- F. Deciding upon appropriate enforcement action
- G. Implementing enforcement action

A. INSPECTION. [FOOD LAW OF 2000, SECTIONS 3123, 3125 & 6129]

1. **Routine inspection**, and
2. **Re-inspection** for compliance with stated correction schedules.
Essential to an effective enforcement policy, routine inspections verify whether violation corrections were completed or if there is a need for further enforcement action. Routine inspections (re-inspections) are not intended to be lengthy visits. The inspector should not inspect the entire firm at this time, but concentrate on violations previously cited. However, if a new serious violation is present, the inspector should document it and complete appropriate routine inspection(s).
3. Establishment in *Substantial Compliance*. Continue routine monitoring. (No follow-up to determine compliance.)
4. Establishment in *Non-Compliance*. Continue progressive enforcement.

Model Food Protection Program Enforcement Procedures

B. DOCUMENTING VIOLATIONS

At a minimum, each firm is evaluated with respect to state regulations at routine inspection intervals. Assessment is based on presence of violations at the time of inspection, as well as history of violations and/or enforcement. Inspection reports should convey violations clearly and concisely. Further, firm should be informed of compliance expectations through discussion and/or providing copies of laws and regulations. It is expected that all violations are corrected in a timely manner, otherwise enforcement action may be required.

Violations are categorized with regard to severity or type. They are classified as follows:

Critical violations are those violations that if in non-compliance are more likely than other violations to contribute to food contamination, illness or environmental health hazard. Critical violations must be corrected immediately; a follow-up inspection will occur within 0-10 days to document corrections.

Non-critical violations are those that document conditions that are in violation of the law, but are not classed as critical violations. At a minimum, non-critical violations are re-assessed at each routine inspection. They shall be re-assessed more frequently if they migrate to a critical violation or if enforcement action dictates.

Imminent or Substantial hazard is an overall condition at a food establishment that the director or health officer determines requires immediate action to prevent endangering the health of people.

C. ASSESSING HISTORY

Firm history with regard to violations, is evaluated and classified as follows:

Continuous violation is a specific violation that is observed during a routine inspection, is documented, and persists on more than one inspection without correction.

Recurring violation is a specific violation that is observed during a routine inspection, is documented, is corrected, and recurs.

D. NOTIFYING SUPERVISOR OF ESTABLISHMENTS REQUIRING ENFORCEMENT REVIEW

Establishments will be brought to the attention of the supervisor when conditions warrant an enforcement review. The supervisor will be notified of the violation history and enforcement history of the firm and will be expected to make a decision on further enforcement or other method of achieving compliance.

The violations will be tracked by the inspector who will notify supervisor of need for enforcement review in the following conditions:

- **Continuous critical violation** – the same critical violation is documented and is *uncorrected at two (2) consecutive inspections* (routine inspection plus follow-up inspection).
- **Recurring critical violation** – the same critical violation is documented at *three (3) consecutive* routine inspections, but is corrected after each documentation.
- **Continuous non-critical violation** – the same non-critical violation is documented and is *uncorrected*

Model Food Protection Program Enforcement Procedures

at three (3) consecutive inspections.

- **Recurring non-critical violation** – the same non-critical violation is documented *at four (4) consecutive routine inspections*, but is corrected after each documentation.

When notified of establishments in need of enforcement review, the supervisor has the option of choosing an enforcement action, a follow-up inspection, or no action, depending on the factors involved. For each enforcement activity, a follow-up inspection shall occur within a maximum of 14 days.

For each establishment that undergoes an enforcement review, documentation stating the enforcement decision and the rationale for that decision will be placed in the establishment file.

Once an establishment begins the enforcement review process, the establishment will continue to be monitored at each visit until violations are corrected.

E. DETERMINING STATUS

Firm status will be assessed at each visit. The status will fall into one of the following categories:

- **Non-actionable** – no uncorrected critical violations exist, non-critical violations may exist but are not at a level requiring enforcement review.
- **Pending** – firm is awaiting follow-up inspection as a result of violations.
- **Actionable** – firm is flagged for enforcement, an enforcement action has been initiated.
- **Fail** – firm has entered the license revocation process (includes informal hearing state).

F. DECIDING APPROPRIATE ENFORCEMENT ACTION

The goal of this policy is to have consistent and progressive enforcement when enforcement is warranted.

Whenever an establishment is in compliance with mandated corrections and compliance schedules, and is not a chronic violator of sanitation standards, the agency will perform routine inspections with follow-up or recheck inspections as required to verify routine correction of violations.

◆ ENFORCEMENT OPTIONS

The goal of this model policy is to achieve consistent and progressive enforcement when enforcement is warranted. The actions defined below are in approximate order by increasing severity.

Re-inspection – Routine inspections determine compliance with a mandated or agreed upon correction schedule. The correction schedule may occur as the result of a routine inspection, office conference, informal hearing, or formal hearing. If the establishment exhibits *non-compliance* with orders or agreements, proceed to the next appropriate enforcement action (for example, a formal hearing, if the follow-up inspection is the result of a mandated compliance stated in an informal hearing).

Warning letter – letter issued by supervisor that explains violations and establishes new compliance dates for

Model Food Protection Program Enforcement Procedures

correction of violations; follow-up inspection required to verify correction of violations.

Compliance conference – meeting between a licensee or designated representative, and local health department representatives. The purpose of the meeting is to clarify expectations for food protection and sanitation, and the consequences of failure to maintain standards. The meeting also offers an opportunity for the firm to demonstrate their plan for addressing food safety issues. The meeting may result in an agreement for compliance. Follow-up inspection is required to verify corrections and compliance.

Notification to firm regarding a compliance review should include the following:

- ◆ Notice stating reasons for the meeting.
- ◆ List of deficiencies or statement of involved issues.
- ◆ Legal authority
- ◆ Time, date and place of meeting.

Notification to firm after compliance review should include the following:

- ◆ Results of the meeting.
- ◆ Those in attendance at the meeting.
- ◆ Purpose and authority for meeting.
- ◆ Items discussed.
- ◆ Items resolved.
- ◆ New compliance dates or agreement reached.
- ◆ Signatures of establishment representative and local health department representative(s).

Mandatory food safety training. – after a conference with the owner for a repeated failure to correct a critical violation, the agency may require certain individuals to complete manager food safety training for that establishment. [Food Law of 2000 § 2127.]

Administrative Fine - Levy fines for non-compliance according to the jurisdiction's established guidelines¹.

Prosecution – agency representatives file complaint with county prosecutor for violation of state laws or regulations.

Informal hearing – a meeting between a licensee or designated representative, and agency representatives. This is preliminary to issuance of a formal notice of the department's intent to revoke or suspend the license. This process should be coordinated through the Health Officer (See Appendix A).

¹ Implementation of Administrative Fines requires an enabling ordinance at the local level.

Model Food Protection Program Enforcement Procedures

License revocation or suspension – process that begins with the informal hearing, and offers the opportunity for a formal (contested case) hearing. The hearing is attended by licensee, agency representatives, and department hearing officer. This process must be coordinated through the Lansing office with concurrence by the executive office and the Attorney General's office.

Cease food operation order – order made by the department director or designee for immediate cessation of operation of a food establishment based upon a determination that continued operation would create an imminent or substantial hazard to the public health. Licensee may request an administrative hearing. Re-inspection must occur in order to resume operations.

Formal Hearing. A formal hearing is held for the purpose of determining whether a food service license should be suspended or revoked; or to determine whether an order from the health officer to suspend food service should be relieved. In addition, a food service license holder may request a formal hearing if the licensee is aggrieved by an order of the health officer or his agent. See Appendix B for a description of the formal hearing process.

Order to cease all food service operations due to the presence of an imminent health hazard. An order to cease food service operations shall be complied with immediately. The licensee may request a formal hearing on the order to cease operations. Food service operation shall remain closed to the public pending the outcome of the hearing.

Order to cease all food preparation and service. The operator does not possess a food service license. The agency shall order the operator to cease all food service operations at once. Operations may not resume until the operator is in full compliance with all licensing requirements. Operating a food service establishment without a license.

Order construction, alterations, conversions to cease, according to Section 6101-6125, until plans and specifications are submitted and approved.

Summary suspension of license – department director may summarily suspend a license or registration, based on evidence that an imminent threat to the public health, safety or welfare exists. Licensee may petition the director to dissolve the order. The director shall schedule a hearing to decide whether to grant or deny the petition to dissolve the order.

◆ ADDITIONAL TOOLS:

These tools may be used in conjunction with enforcement action, but not in place of enforcement action. These tools are not considered enforcement actions in and of themselves. However, they may be useful in achieving compliance when used in combination with an enforcement action.

Model Food Protection Program Enforcement Procedures

License Limitation – the agency may place restrictions on a food service license, limiting the preparation of food for the purpose of protecting the public’s health. A licensee must be provided an opportunity for an administrative hearing on the issue of the imposition of the license limitation. A licensee may at any time, request a re-inspection of the food establishment for removing the limitation and reinstating the full license. [Food Law of 2000, Section 2121.]

Seizure – order issued to hold food found to be sold, held for sale, or exposed for sale in violation of state laws and regulations, or suspected of being in violation of state laws and regulations. Follow-up is required to record disposition of product. [Food Law of 2000, section 2105.]

Insanitary notice – order issued in conjunction with an inspection report to inform firm of critical violations and necessary correction steps. Follow-up inspection is required to verify correction of violations.

Re-inspection fee – assessed at the second re-inspection for an uncorrected critical violation²

Injunction – department may apply to circuit court to grant a temporary or permanent injunction restraining any person from violating specified provisions of the state laws and regulations.

Table A **Progressive Enforcement Action Chart**

The following table identifies a trigger event and gives the corresponding steps in progressive enforcement. The steps of enforcement are necessary in cases where compliance is not achieved with an initial enforcement action. Departures from the enforcement progression may occur as deemed appropriate by management and documented.

Additional tools, such as seizure, insanitary notice, and re-inspection fee (where available) may be used with any enforcement action.

² Requires local ordinance.

Model Food Protection Program Enforcement Procedures

Trigger Event	Steps in Progressive Enforcement
<i>Substantial Hazard</i>	<ol style="list-style-type: none"> 1) Cease food operation order 2) Summary suspension of license
<i>Egregious Violation of Prohibited Acts (MCLA §289.5101(1))</i> ♦ Supervisor notified immediately	<ol style="list-style-type: none"> 1) Administrative Fine 2) Compliance review 3) Prosecution 4) License revocation/limitation
<i>Continuous Uncorrected Critical Violation</i> ♦ Supervisor initially notified after violation remains uncorrected at two (2) consecutive inspections	<ol style="list-style-type: none"> 1) First Administrative Fine – Food Code violation or Prohibited Acts violation 2) Compliance Review – in conjunction with first or second Administrative Fine; may include required manager training 3) Second Administrative Fine – Food Code violation or Prohibited Acts violation 4) Prosecution 5) License revocation/limitation
<i>Recurring Critical Violation</i> ♦ Supervisor initially notified after violation is documented at three (3) consecutive inspections; violation correction is also documented.	<ol style="list-style-type: none"> 1) Compliance Review 2) First Administrative Fine – Prohibited Acts violation 3) Second Administrative Fine – Prohibited Acts violation 4) Prosecution 5) License revocation/limitation
<i>Continuous Uncorrected Non-critical Violation</i> ♦ Supervisor initially notified after violation remains uncorrected at three (3) consecutive inspections.	<ol style="list-style-type: none"> 1) Warning letter 2) First Administrative Fine – Food Code violation or General Violation of law 3) Second Administrative Fine – Food Code violation or General Violation of law 4) Prosecution if extensive 5) License revocation/limitation
<i>Recurrent Non-critical Violation</i> ♦ Supervisor initially notified after violation is documented at four (4) consecutive inspections; violation correction is also documented.	<ol style="list-style-type: none"> 1) Warning letter 2) First Administrative Fine – General Violation of law 3) Second Administrative Fine – General Violation of law 4) Prosecution if extensive 5) License revocation/limitation

Model Food Protection Program Enforcement Procedures

Appendix A

Informal Hearings

An informal hearing is held to determine correction schedules and license limitations necessary to create compliance with Michigan's food law, and to protect the public's health. An informal hearing may be held for any or all of the following reasons:

1. Failure to comply with an order of the health officer to correct recurring, continuous, or critical violations.
2. Failure to meet the minimum requirements of the Food Law of 2000.

Formal Hearings

1. Interfering with an agent of the health officer in the performance of his/her official duties.
2. Critical items are *chronic or repeated*, or, *continuous* violations.
3. A written request from a licensee.

The requirement for an informal hearing shall be noted on an inspection report if a representative of the [Agency Name] observes practices or conditions in violation of an existing compliance agreement. The licensee shall be notified of the time, place and date for the informal hearing in a written notice. The notice shall state the reasons for the hearing; shall advise the licensee of his/her right to representation at the hearing; and shall allow the licensee to request a change of date or time up to 48 hours prior to the original hearing date and time.

At the hearing, a hearing officer will hear testimony from the [Agency Name] representative and the licensee or the licensee's representative. If the alleged violations are confirmed, the hearing officer shall mandate corrections and a compliance schedule. The facility shall remain in compliance with mandated corrections for the length of the compliance schedule. If the facility is not in compliance with mandated corrections where the compliance schedule, and the department may order a formal hearing for the purpose of suspending or revoking the establishment's food service license.

If the hearing is requested by the licensee, the Hearing Officer may order an inspection or other options to determine the validity of the licensee's complaint.

Model Food Protection Program Enforcement Procedures

Appendix B

Formal Hearing Procedures

Either upon request to the Health Officer by, or on behalf of, any licensee or the licensee's representative whose license has been revoked, or if a food service establishment has failed to comply with the requirements set forth by an Informal Hearing, a Formal Hearing shall be afforded as soon as possible, within a period of time not to exceed ten (10) working days, provided that this shall in no way affect any order to cease food service operations or revocation of license in advance of said hearing. The hearing shall be conducted during the working hours of the [Agency Name] at a time and place designated by the Health Officer. The Hearing Board shall consist of at least two members, described as follows [Describe a Board composed of at least two members, one representing the local elected legislative authority and one representing the regulatory authority, Local Health Department for example]. If one or more of the alleged violations have been confirmed, the Hearing Board shall determine whether and under what stipulations the affected license shall be reinstated or shall be further suspended, or revoked, and shall notify the licensee in writing of the determinations.

The decision of the Hearing Board following the hearing shall be final unless appealed to a court of competent jurisdiction. The licensee or licensee's representative may attend the hearing with witnesses, and may be represented by legal counsel. In the event the licensee or licensee's representative fails to attend said hearing, the licensee shall be deemed to have been afforded an opportunity to comply with said regulations.

FORMAL HEARING PROCEDURE:

1. NOTIFICATION OF FORMAL HEARING: Notification to licensee of a Formal Hearing shall be sent by certified/return receipt requested mail or hand-carried to licensee/operator of facility and shall include the following:
 - A. Dates of previous routine and follow-up inspections, relative to the formal hearing.
 - B. List of deficiencies, item by item or statement of issues.
 - C. A statement that deficiencies are in violation of Act 92 of 2000.
 - D. Time, date, and place of Formal Hearing.
 - E. Notice that the licensee may have legal counsel present.
 - F. No less than 48 hours notice if rescheduling is necessary.
 - H. Notice that a failure to appear or reschedule may result in revocation of license to operate a food service establishment.
2. FORMAL HEARING STATUTORY PROCEDURES:
 - A. Hearings:
 1. Notices to licensees shall include date, time, and place of the hearing, as well as the address and telephone number of the [Agency].
 2. A hearing may be adjourned if the licensee sends a written notification of inability to attend the

Model Food Protection Program Enforcement Procedures

hearing no less than 48 hours before the scheduled hearing date. If the licensee fails to appear without giving prior notice, the hearing may proceed and a decision may be rendered in the licensee's absence.

3. The [Agency] shall prepare an official record of all hearings, which shall include:
 - a. Notices, inspection reports, correspondence and intermediate rulings.
 - b. Questions and offers of proof, objections and rulings thereon.
 - c. Evidence presented.
 - e. Proposed findings.
 - f. Any decisions, opinions, orders, or findings of fact by the officer presiding at the hearing and by the [Agency].

B. Legal Representation & Witnesses:

1. Licensee and [Agency] may have legal representation and witnesses in their behalf.
2. The Hearing Officer may require attendance and the giving of testimony by witnesses and the production of books, papers and other documentary evidence.
3. A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use by the [Agency] and offered in evidence. A party may submit rebuttal evidence.
4. The [Agency] shall make all records in a case, including statements by [Agency] witnesses, available to opposing parties for use on cross-examination.

C. Evidence:

1. Parties shall be given an opportunity to present oral and written arguments on issues of law, policy and facts.
2. All evidence to be presented at a hearing shall be entered only at the time of the hearing. No evidence will be added or deleted after the hearing.
3. Irrelevant, immaterial or repetitious evidence may be excluded. Objections to offers of evidence may be made and shall be noted in the record. Hearsay evidence and testimony may be allowed, but the weight will be adjusted accordingly.
4. A deposition may be used in lieu of other evidence, when taken in accordance with the Michigan Court Rules.
5. Documentary evidence may be received in the form of a copy or excerpt. All documentary evidence incorporated by reference must be made available for examination by licensee or his/her representative or legal counsel.

D. Decisions:

1. Decision of the Hearing Board shall be rendered within 30 days of the hearing and shall be final concerning the administrative hearing process.
2. Final decision in a case must be read into the record, or put into written form and copies sent to all concerned parties and attorneys of record. A final decision or order shall include findings of fact and conclusions of law.
4. An appeal may be sought through Circuit Court not later than 60 days after the date of delivery of or mailing notice of the final decision.

Model Food Protection Program Enforcement Procedures

3. FORMAL HEARING, SEQUENCE OF REPRESENTATIONS: The sequence of presentation at hearing shall be as follows:
 - A. Call to order.
 1. Date, time and reason for hearing stated.
 2. Introductions. All names, positions and titles, representatives and reasons for attendance of individuals present at the hearing shall be stated for the record by the Hearing Officer. At this time, the Hearing Officer shall question Board Members as to any conflict of interest in the case before the Board.
 - A. Hearing format:
 1. Proceedings are to be recorded and kept available as a matter of public record.
 2. [Agency] staff shall present their case, allowing opportunities for cross-examination by the licensee or the licensee's representative.
 3. The licensee or the licensee's representative shall present their case, allowing an opportunity for cross-examination by the [Agency] staff, or the [Agency] representative.
 4. Both the [Agency] and the licensee shall have an opportunity to clarify their respective positions.
 5. Hearing Board members may ask questions at any time.
 6. The Board may deliberate on the testimony and evidence for no more than 30 days. The Board must render a decision within 30 days.
 7. Final decisions of the Board shall be announced with all parties present in a meeting open to the public. A decision may be made for the [Agency] or the licensee on each allegation.

Model Food Protection Program Enforcement Procedures

Reference

Uniform Citation of Violations

Transmittal No. 8-4-01
Date: **Effective 11/08/00**

INTERPRETATIVE MEMORANDUM

TO: All Local Health Departments
Attn.: Health Officer/Director of Environmental Health/Chief Sanitarian
MDA Food Program Staff

FROM: Food Service Sanitation Section & Science and Technology Section
Food and Dairy Division

SUBJECT: Uniform Citation Of Violations

Background

All those involved in food inspections agree that uniformity of the inspection process is critical. Operators become frustrated when the requirements seem to change from county to county or inspector to inspector. Inspectors become embarrassed when they are caught in a situation where another inspector contradicts them or issues conflicting requirements.

One aspect of uniformity is a consistent method for citing violations. The following process delineates the specifics of what constitutes a violation. It limits the possible shades of gray, but does not totally eliminate them.

Steps in Determining And Citing Violations

Step 1 - Does a violation exist?

Items are marked as violations on the inspection report when they clearly exist in the food establishment. A violation represents a deviation from a Food Code (FC) or Food Law provisions. Slight violations, such as one dirty utensil among a thousand clean ones, does not indicate that the establishment is significantly deviating from the requirement to use clean utensils.

Model Food Protection Program Enforcement Procedures

Step 2 - Is there one or more than one violation?

Each violation of a code provision is reported as a separate item on the inspection report. This does not mean, however, that each instance should be considered a distinctly separate reportable violation. Some discretion is warranted when preparing the inspection report, but this discretion should fall within the following guidelines:

A. Grouping by Common Cause

Numerous violative items resulting from a common cause should be categorized into a single violation.

Example 1: A cooler with mechanical problems may result in a dozen or more potentially hazardous food items being at a violative temperature. The cooler is considered a malfunctioning refrigeration device under FC § 4-501.11, Cooling, Heating, and Holding Capacities, because repairs are needed to bring the unit into compliance. These numerous items are categorized as one food temperature violation and cited only one time under FC § 3-501.16(B) or (C), Potentially Hazardous Food, Hot and Cold Holding. (Of course, if the time the food is out of temperature warrants, each of the violative foods should be discarded by the permit holder or person in charge and disposition noted on the report.)

B. Separation by Type

A single situation may contain multiple violations. Each type of violation should be separated out by category and cited.

Example 2: A cooling unit is properly functioning, but improper cooling practices were used, resulting in the high temperatures being found in the potentially hazardous food. This is a violation of FC § 3-501.15(A), Cooling Methods, *and* FC § 3-501.16(B) or (C), Potentially Hazardous Food, Hot and Cold Holding.

C. Separation of Multiple Causes

When similar violative items occur from separate causes, each item is cited individually.

Example 3: Two separate coolers have items out of temperature as the result of two separate instances of improper practices. Each instance should be individually cited as a violation. The details included in each citation should clearly delineate the conditions found in each instance.

Example 4: A large meat cutting room has numerous separate areas requiring cleaning. If there were a buildup of old food debris and other filth on the floor of the room in five separate areas, then one violation would exist. However, if the cleaning problem existed in the meat room, the produce area, bakery, and two restrooms, one violation of FC § 6-501.12(A) is cited for each of the incidences listed.

Step 3 - Record all violations found.

Model Food Protection Program Enforcement Procedures

Record inspection findings on the report to detail the violations found during the inspection. This applies even to those items corrected during the inspection (note corrections on the inspection report). The U.S. Food and Drug Administration's studies of programs that have the most effective compliance found a correlation between the completeness of data recorded and the success of the compliance program. Alternative approaches decrease regulatory effectiveness.

STYLE ELEMENTS

The following style elements for narrative reports have been found to increase the effectiveness of the report:

- List the critical violations first for emphasis.
- Leave a blank line between individual violations cited.
- Note repeat violations. Repeat items are those that were in violation on the last inspection. Indicating when the original violation occurred may also be helpful. Notation may be made with an asterisk and footnote.

Reference: Annex 4 of the FDA Food Code

Model Food Protection Program Enforcement Procedures

Appendix D1

{for "field" use}



Date: _____

NOTICE OF COMPLIANCE CONFERENCE

Name of Establishment

Address

City

On this date the above named establishment licensed under Public Act 92 of 2000, the Food Law of 2000, and the {Agency} County Environmental Health Code is cited for:

- A _____ Failure to correct CRITICAL ITEM(S) within the prescribed time limit.
- B _____ Failure to correct non-critical violation(s) within the prescribed time limit.
- C _____ Other:

The licensee or designated representative **and** the Certified Food Service Manager are required to appear at the {Local Health Agency} County Health Department at {time} AM/PM on {date} to discuss the list of the violations provided to your representative by our staff. You may be represented by personal counsel if you so elect.

Prior notice (**at least 48 hours**) is required if either party wishes to reschedule the Office Consultation.

Should you fail to comply with this notice or the decision of the meeting, further administrative action will be pursued regarding the establishment's food license.

Conference Notice issued by:

Received by: _____ Date: _____

Model Food Protection Program Enforcement Procedures

Appendix D2

{“mailed” use}



{Date}

Attn: Licensee or Designated Representative
{Restaurant}
{Address}
(City, MI, Zip)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

License No. 82-00
Conference No. 99-

NOTICE OF COMPLIANCE CONFERENCE

The licensee or designated representative and the Certified Food Manager are required to appear at the {Local Health Agency} Health Department for an office consultation on {day, date} at {time} to discuss the violations of Public Act 92 of 2000, the Food Law of 2000 and the {Local Health Agency} Health Code, which have been brought to your attention and which you have failed to correct.

The meeting will be held at the {Local Health Agency} Health Department, Division of Environmental Health, {address}, Michigan. You may be represented by personal counsel if you so elect.

Prior notice (**at least 48 hours**) is required if either party wishes to reschedule the Compliance Conference.

Should you fail to comply with this notice or the decision of this meeting, further administrative action will be pursued regarding the establishment's food license.

Conference notice issued by:

Department Manager

Model Food Protection Program Enforcement Procedures

Appendix D3



{Date}

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Attn: Licensee or Designated Representative
{Restaurant}
{Address}
(City, MI, Zip)

Re: Compliance Conference No. 99
License No. 82-00

On {date} a Compliance Conference Notice was issued to discuss non-compliance of Public Act 92 of 2000, the Food Law of 2000, and the {Local Health Agency} County Health Code.

On {date} at {time}, the Compliance Conference was held to provide an opportunity for you to show compliance with the provisions of Public Act 92 of 2000, the Food Law of 2000, and the {Local Health Agency} Health Code. The Department did not receive a request to reschedule the Compliance Conference as provided in the original notice. In your absence, the Compliance Conference was held, and a violation correction schedule was established. You must comply with the attached violation correction schedule.

A revisit will be conducted by a representative of this Department. Failure to comply with the revised violation correction schedule will result in issuance of an Informal Conference Notice.

If you have any questions, you may contact this office at the number listed below.

Sincerely,

Department Manager
Attachment

Model Food Protection Program Enforcement Procedures

Appendix D4



COMPLIANCE CONFERENCE MEETING NO. 99-
LICENSE NO. 82-00

COMPLIANCE CONFERENCE FOR:

DATE:

TIME:

ATTENDING ENVIRONMENTALIST:

Department Manager-Supervisor

LICENSEE OR DESIGNATED REPRESENTATIVE

I AGREE TO COMPLY WITH THE VIOLATION CORRECTION SCHEDULE ESTABLISHED AT THIS CONSULTATION.

FAILURE TO COMPLY WITH THE VIOLATION CORRECTION SCHEDULE WILL RESULT IN THIS AGENCY TAKING ADMINISTRATIVE ACTION AGAINST YOUR FOOD SERVICE LICENSE.

Date

Model Food Protection Program Enforcement Procedures

Appendix D5



{Date}

Attn: Licensee or Designated Representative
{Restaurant}
{Address}
(City, MI, Zip)

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

License No. 82-00
Informal Hearing No. 99-

NOTICE OF INFORMAL HEARING

The licensee or designated representative and the Certified Food Manager are required to appear at the {Health Agency} Health Department for an Informal Hearing on {day, date} at {time} to discuss the violations of Public Act 92 of 2000, the Food Law of 2000 and the {Local Health Agency} Health Code, which have been brought to your attention and which you have failed to correct within the mutually acceptable corrective schedule.

The Informal Hearing will be held at the {Local Health Agency} Health Department, Division of Environmental Health, {address}, Michigan. You may be represented by personal counsel if you so elect.

Prior notice (**at least 48 hours**) is required if either party wishes to reschedule the Informal Hearing.

Should you fail to comply with this notice or the decision of this Informal Hearing, further administrative action will be pursued regarding the establishment's food license.

Hearing notice issued by:

Section Chief – Code Compliance

Model Food Protection Program Enforcement Procedures

Appendix D6



{Date}

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Attn: Licensee or Designated Representative
{Restaurant}
{Address}
(City, MI, Zip)

Re: Informal Hearing No. 99-
License No. 82-00

On {date} an Informal Hearing Notice was issued to discuss non-compliance of Public Act 92 of 2000, the Food Law of 2000, and the {Local Health Agency} County Health Code.

On {date} at {time}, the Informal Hearing was held to provide an opportunity for you to show compliance with the provisions of Public Act 92 of 2000, the Food Law of 2000, and the {Local Health Agency} Health Code. The Department did not receive a request to reschedule the hearing as provided in the original notice. In your absence, the Informal Hearing was held, and a violation correction schedule was established. You must comply with the attached violation correction schedule.

A revisit will be conducted by a representative of this Department. Failure to comply with the revised violation correction schedule will result in issuance of a license revocation notice, a license suspension notice or an immediate closure order.

If you have any questions, you may contact this office at the number listed below.

Sincerely,

Section Chief – Code Compliance
Attachment

Model Food Protection Program Enforcement Procedures

Appendix D7



INFORMAL HEARING NO. 99-
LICENSE NO. 82-00

INFORMAL HEARING FOR:

DATE:

TIME:

ATTENDING ENVIRONMENTALIST:

Section Chief – Code Compliance

LICENSEE OR DESIGNATED REPRESENTATIVE

I AGREE TO COMPLY WITH THE VIOLATION CORRECTION SCHEDULE ESTABLISHED AT THIS CONFERENCE.

FAILURE TO COMPLY WITH THE VIOLATION CORRECTION SCHEDULE WILL RESULT IN AN ISSUANCE OF LICENSE REVOCATION NOTICE, LICENSE SUSPENSION NOTICE OR A CLOSURE ORDER.

Date

Model Food Protection Program Enforcement Procedures

Appendix D8



Date: _____

License No. _____

Name of Establishment

Address

City

LICENSE SUSPENSION NOTIFICATION

You are hereby notified of the intent of this Department to suspend your Michigan Food License effective 12:00 midnight *{date}*, pursuant to Public Act 92 of 2000, the Food Law of 2000, for your failure to correct cited critical violations within the prescribed time limits and to maintain acceptable sanitation levels. Inspections conducted by this department on *{date}* found repeat critical violations.

PREPARATION AND/OR SERVICE OF FOOD AND/OR DRINK TO THE PUBLIC IS PROHIBITED AFTER THE EFFECTIVE DATE OF THE LICENSE SUSPENSION.

You may request a contested case hearing on this matter by submitting a written request within fifteen (15) calendar days of notice. The request shall be signed and shall include: (1) The name, address and telephone number of the appellant; (2) A short statement of the matters in question; and (3) A short statement of the appellant's position. Also, a one-hundred dollar (\$100.00) filing fee must be submitted to {Local Health Agency}. The request should be addressed to:

{Name}

{Address, City State, Zip}

Received by: (licensee or designated representative)

Environmentalist

Date Time

Model Food Protection Program Enforcement Procedures

Appendix D9



Date: _____

License No. _____

Name of Establishment

Address

City

LICENSE REVOCATION NOTIFICATION

You are hereby notified of the intent of this Department to revoke your Michigan Food License effective 12:00 midnight *{date}*, pursuant to Public Act 92 of 2000, the Food Law of 2000, for your failure to correct cited critical violations within the prescribed time limits and to maintain acceptable sanitation levels. Inspections conducted by this department on *{date}* found repeat critical violations.

PREPARATION AND/OR SERVICE OF FOOD AND/OR DRINK TO THE PUBLIC IS PROHIBITED AFTER THE EFFECTIVE DATE OF THE LICENSE REVOCATION.

You may request a contested case hearing on this matter by submitting a written request within fifteen (15) calendar days of notice. The request shall be signed and shall include: (1) The name, address and telephone number of the appellant; (2) A short statement of the matters in question; and (3) A short statement of the appellant's position. Also, a one-hundred dollar (\$100.00) filing fee must be submitted to {Local Health Agency}. The request should be addressed to:

{Name}

{Address, City State, Zip}

Received by: (licensee or designated representative)

Environmentalist

Date Time

Model Food Protection Program Enforcement Procedures

Appendix D10



SUMMARY SUSPENSION OF FOOD LICENSE

Date: _____

Name of Establishment: _____

Address: _____

Due to an imminent and substantial health hazard: _____, you are in violation of Public Act 92 of 2000, the Food Law of 2000. Your establishment shall be closed until correction is made and this department determines that the violation(s) has (have) been eliminated or corrected.

You may request a contested case hearing on this matter by submitting a written request within fifteen (15) calendar days of notice. The request shall be signed and shall include: (1) The name, address and telephone number of the appellant; (2) A short statement of the matters in question; and (3) A short statement of the appellant's position. Also, a one-hundred dollar (\$100.00) filing fee must be submitted to {Local Health Agency}. A request for a contested case hearing does not nullify this notice. The establishment must remain closed pending the results of the hearing or elimination of the violations.

The request should be addressed to:

{Name}
{Address, City State, Zip}

Received by: (licensee or designated representative) Environmentalist Date Time

Model Food Protection Program Enforcement Procedures

Appendix D11



FINAL NOTICE

Establishment:

Date Notice Delivered

Address

Time (AM/PM)

City

License Number

You are in violation of Public Act 92 of 2000, the Food Law of 2000.

Section 12904.(1) "A person shall not operate a food service establishment, transitory food unit, temporary food service establishment or vending machine location in this state without a license issued by the department."

You are hereby ordered to apply for a license to operate a food service establishment. Failure to apply for said license within 48 hours will result in closure of your business.

Submittal of the application (utilizing the pre-printed application if possible) with the appropriate fee of \$_____ and a late charge of \$_____, for a total of \$_____ must be received by this office located at {address} before _____ AM/PM on (date).

Notice Received by: (licensee or designated representative)

Environmental

Date

Model Food Protection Program Enforcement Procedures

Appendix D12

‘WARNING’ SIGN/TAG TO BE USED FOR BOTH SITUATIONS PENDING DEVELOPMENT OF ADDITIONAL NOTICES/SIGNS/TAGS

WARNING

-NOTICE-

This structure is not to be occupied or used until approved by the {local health agency} Health Department in accordance with

NUMBER

STREET

CITY/TOWNSHIP

REASON

This notice is NOT TO BE REMOVED until authorized by the {Local Health Agency} Health Department under penalty of STATE LAW.

For information, call:

{Local Health Agency}

{Telephone Number}

REPRESENTATIVE DATE